(42)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH

W.P. NO. 99/2001

PETITIONER — Rohini Kumar Jha

Vs.

RESPONDENT — State of Chhattisgarh

INTERVENER — Smt.Pushpa Tiwari

REPLY (REJOINDER) BY THE INTERVENER OF THE RETURN OF THE RESPONDENT

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 99 OF 2001

(24 V)

Rohini Kumar Jha

-v-

State of Chhattisgarh

O R D E R

This petition has been registered on the basis of a letter dated 10th January, 2001 written by one Rohini Kumar Jha, r/o. Power House Chowk, Vijay Ward, Jagdalpur (Bastar), Chhattisgarh. In the letter, it is contended that the State of Chhattisgarh and Cement Industries have entered into an agreement to sell the cement to the State at lower rate and to the consumer at higher rate. This Court felt that some clarification from the concerned authorities is required. Office was directed to supply a copy of the letter to the counsel for the State.

2. The State has filed reply. The stand of the State is that Rs. 90/- per bag is factory price and besides this there are sales tax, surcharge, transportation charges and excise duties, dealers commission, so the price to the consumer is high and State being a bulk consumer was supplied at the rate of Rs. 90/- per bag. Learned counsel for the State submitted that there is no such agreement between the State and Cement industries/manufacturers.

3. An intervention application was filed by one Smt. Pushpa Tiwari in support of the petition. The intervention application is to the effect that the State has to be concerned with the price rise

and there are alarming reports regarding price hike. It is pointed out in the intervention application that proceedings are pending against leading cement companies in Monopolies and Restrictive Trade Practices Commission (MRTPC). The reliefs claimed are that Union of India be directed to rescind the notification no. 44(RE-200/1997-2002) dated 24-11-2000 Annexure P/21, and respondent be directed to invoke the M.P. Prevention of Black Marketing and Maintenance of Supplies of Essential Commidities Order, 1980 and to make suitable legislation. The respondent be directed to make suitable legislation in accordance with item 34 of the concurrent list of Schedule 7 of the Constitution of India. A further relief has been sought to direct the Monopolies and Restrictive Trade Practices Commission to enquire into the complaints and to submit report. It is further prayed that reppondent be directed not to cause discrimination by purchasing cement cheaper than what is being made avaibale to the public at large.

4. The State of Chhattisgarh has filed return and raised various contentions. It has also filed Additional return. Learned Advocate General pointed out that there is Cement Control Order, 1967 issued under Section 18-G and Section 25 of the Industry (Development and Regulation Act, 1951. However, by notification No. 168(E), subsequently the Central Government decided for removal of price and distribution Control of cement with effect from 1st March, 1989. Statement regarding Cement in Parliament by the Union Minister for Commerce and Industry has been filed along with intervention application, itself. A copy of representation received from Maharashtra Chamber of

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Housing Industry and Builders' Association of India regarding the steep rise in cement prices in a short time has been filed. In the representation it is contended that despite increased production and availability of cement, cartelisation among the major cement manufacturers has resulted in the present state of affairs, leading to hardship for cement consumers. A letter has also been addressed to the Prime Minister for the same relief. Learned Advocate General appearing for the State pointed out that many of the documents filed by the intervenor herself go to show that various States have taken up the matter with the Union of India and it is the Union of India/Central Govt. where the matter has been referred to.

5. Learned Advocate General submitted that State of Chhattisgarh has no role so far as the price of cement is concerned. He also submitted that M.R.T.P.C. is seized of matter. He submitted that the invervenor and the petiti-oner if so desire may approach the Commissioner. The State Government has purchased the cement at the rate of Rs. 90/- at factory price. There has been no understanding or agreement with the manufacturers.

6. The Manufacturers were issued notices and many of them have filed their reply mentioning therein that there was no agreement.

7. The petitiner/and intervenor have filed some affidavits. I.A. No. 1825/2001 has been filed by the petitioner. We have heard the matter. So far as the joining of Union of India is concerned, we do not deem it fit and proper for the purpose of letter petition and that too at this stage.

8. Another application has been filed for calling

for the affidavit of Industries Minister of State of Chhattisgarh. Having considered the application and giving our thoughtful consideration, we do not find any justification for calling for the affidavit.

9. So far as the purchase of Cement at lower rate is concerned, learned counsel for the State also pointed out that the State in fact has acted bonafide and for benefit of public exchequer. It is not a case where the commodity has been purchased at higher rate causing loss to the public exchequer. Public money has not been wasted here. If the cement has been purchased at factory rate or lower rate, it has saved the public money and therefore, it is not a case where there is a loss of public exchequer. It is submitted by learned counsel that price has now gone down and cement is available at the rate of Rs. 100/- per bag.

10. Having given our thought-ful consideration and taking all aspects into consideration and the matter is pending with the M.R.T.P.C., we do not consider that any useful purpose would be served by keeping pending this letter petition. As pointed out, various States have written to the Union of India and the matter is under examination.

11. In view of the above, the petition, intervension application and also also interlocutary applications all disposed of.

12. No order as to costs.

Sd/-
Chief Justice

16/8/2001

Sd/-
Fakhruddin
Judge

16/8/2001

pathak/-